

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

June 20, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 10, 2006

Case Number: TSO-0388

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual's security clearance should be restored.

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In August 2004, he was arrested for Assault and Battery of a Household Member. In the aftermath of this arrest, he voluntarily entered into intensive outpatient treatment for alcoholism and anger management at a local facility. In accordance with DOE regulations, the individual reported these events to the local security office, which summoned him for an interview with a Personnel Security Specialist. After this July 2005 Personnel Security Interview (PSI), the local security office referred the individual to a psychiatrist for a DOE-sponsored evaluation. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing all of the information in the individual's personnel security file, including the transcripts of the July 2005 PSI and an earlier PSI conducted in February 2002 along with the DOE psychiatrist's report, the local security office determined that derogatory information existed that cast into doubt the individual's continued eligibility for a security clearance. The manager of the local DOE office informed the individual of this determination in a letter that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced fourteen exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual presented the testimony of five witnesses, in addition to himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (f), (h), (j) and (k) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (f) defines as derogatory information indicating that the individual "has deliberately misrepresented, falsified, or omitted significant information from . . . a Personnel Security Interview [or] written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization" With regard to this paragraph, the Letter states that during his 2002 PSI, the individual denied ever using any illegal drug. However, during his 2005 psychiatric evaluation, he informed the DOE psychiatrist that he had used marijuana in 1992 or 1993.

Under paragraph (h), information is derogatory if it tends to show that the individual has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual's judgement or reliability. Paragraph (j) pertains to information indicating that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for these allegations, the Letter cites the DOE psychiatrist's diagnosis that the individual suffers from Alcohol Dependence with physiological dependence in full early remission, and the DOE psychiatrist's conclusion that this condition causes, or may cause, a significant defect in the individual's judgement or reliability. The Letter also states that he was arrested in August 2004 for assault and battery and in July 1992 for battery, and that the police were dispatched to his home to investigate a domestic dispute in 1998. The individual admitted consuming alcohol prior to each of these incidents, and believes that he is an alcoholic whose drinking has had "a big effect" on his marriage.

Paragraph (k) refers to information indicating that the individual has "sold, transferred, possessed, used, or experimented with a . . . substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, . . . etc.)" except as prescribed by a physician or otherwise authorized by federal law. As previously stated, the individual admitted to the DOE psychiatrist that he used marijuana in 1992 or 1993.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under the paragraphs of the criteria for eligibility for access to classified matter or special nuclear material cited in the Notification Letter. Specifically, the DOE psychiatrist’s diagnosis of Alcohol Dependence and the individual’s statements during the PSI concerning his drinking adequately justify the invocation of paragraphs (h) and (j). Furthermore, it is clear from the record in this matter that the individual admitted using marijuana in 1992 or 1993 to the DOE psychiatrist after stating during the 2002 PSI that he had never used any illegal drug, thereby justifying the invocation of paragraphs (f) and (k). DOE Psychiatrist’s Report at 17; 2002 PSI at 16-17.

At the hearing, the individual did not dispute the allegations set forth in the Notification Letter. Instead, he attempted to show that he is now an honest and trustworthy person who has been rehabilitated from Alcohol Dependence. In making this attempt, the individual presented the testimony of three people whom he has encountered through his continuing participation in Alcoholics Anonymous (AA). Two of these people have sponsored the individual, and the third is a fellow AA participant. This fellow participant said that he met the individual approximately three years ago through AA. After attending 90 AA meetings during the first 90 days, the individual began attending three to four times per week, and currently maintains this frequency of participation.

Hearing Transcript (Tr.) at 13, 24. Of the many meetings that the two have attended, the fellow AA participant said that the individual has led approximately one-third of them. Tr. at 17. He added that the individual “slipped,” *i.e.*, consumed alcohol, “almost a year” prior to the hearing. Tr. at 20. Although he could have hid this information and no one would have known, the fellow participant testified that the individual shared it freely with the group. Tr. at 20-22. The “biggest thing in [AA] is honesty, and I see a lot of that from” the individual, he stated. Tr. at 14. He concluded that on the occasions that he has seen the individual away from AA, he has never seen any evidence of alcohol use. Tr. at 26.

The individual’s first AA sponsor then testified. He said that the individual was “very honest” and “up-front” about his “slip,” and that he was doing “very well” in his rehabilitation. Tr. at 29, 31. The individual’s second AA sponsor stated that the individual asked him to be his sponsor about a month prior to the hearing because the individual’s first sponsor had moved. Tr. at 66. The second sponsor said that the individual was doing well and that his participation in the meetings was “honest and heartfelt.” Both sponsors indicated that they socialized with the individual away from AA, and that they had never seen any indication of alcohol use on his part. Tr. at 39, 65-67.

The individual’s substance abuse and addiction counselor then testified. She stated that she began counseling the individual in August 2004 after diagnosing him as suffering from Alcohol Dependence. Tr. at 56-57. During their weekly sessions, they talked about the individual’s alcohol and drug use and about methods of relapse prevention. Tr. at 57. She said that the individual’s prognosis is “good. He’s attending AA meetings, he’s kept that up, and he’s maintained his sobriety.” Tr. at 58-59. Because of the individual’s progress, the counselor determined that she no longer needed to meet with the individual after November 2005. Tr. at 59.

The individual also testified. He admitted to being an alcoholic, and said that he has been attending AA since September 2004. Tr. at 73. After his arrest in August 2004 for assaulting his wife, he explained, he began seeing the substance abuse and addiction counselor, who referred the individual to a local intensive outpatient treatment program and to AA. The individual attended 90 meetings in 90 days, and had nine months of sobriety when he had a brief relapse into alcohol use in April 2005. Tr. at 75, 77. During this period, he explained, he was in the process of divorcing his first wife and was involved in court proceedings concerning his 2004 Domestic Violence arrest, when his mother died. He went to another state for her funeral with the woman he was dating at the time, who asked him to go to a local store and purchase whiskey for her consumption. While at the store, he also purchased a six-pack of beer for himself and drank five of the six beers over the next two days. Tr. at 75-76. He testified that he does not know why he drank, but that between his domestic problems and his mother’s final illness, “things were kind of building up tension-wise.” Tr. at 78. He also said that he missed a number of AA meetings because he was spending a lot of time at the hospital, and that this was probably a contributing factor to his relapse. Tr. at 77. He then stated that he

was so disappointed in myself for going out (relapsing) like that, you know. It hurt me to go out But to go back and tell all these people that are regulars [in AA], you know -

-

Q. But you told them right away?

A. Yeah, oh, yeah.

Tr. at 79. He added that he is no longer dating the woman who asked him to purchase whiskey, and that he has completely abstained from alcohol use since April 1, 2005. Tr. at 80, 85. He further stated that he anticipates attending AA “for a long time,” Tr. at 85, and that his intention is to never consume alcohol again. Tr. at 88. Finally, he stated that his usage of marijuana in 1992 was an isolated incident, and that he has not used illegal drugs on any other occasion. Tr. at 92.

The DOE psychiatrist was the final witness at the hearing. Initially, he discussed his October 2005 evaluation of the individual, indicating that he interviewed the individual after reviewing his personnel security file. Tr. at 104-105. He stated that as a result of his evaluation, he concluded that the individual suffered from Alcohol Dependence with insufficient evidence of rehabilitation or reformation, and that this condition causes, or may cause, a significant defect in judgement or reliability. Tr. at 105-107. In order to show adequate evidence of rehabilitation or reformation, the DOE psychiatrist concluded at the time of the evaluation that the individual would have to demonstrate 200 hours of AA attendance over a two-year period, with abstinence, or participation in a professionally-run alcohol treatment program, with three years of abstinence. If the individual chose not to receive any type of therapy, five years of abstinence would be required to demonstrate reformation. Tr. at 106. However, after observing the testimony of the individual and his witnesses and reviewing the exhibits submitted by the parties, the DOE psychiatrist concluded that the individual was showing adequate evidence of rehabilitation and reformation. Tr. at 109.

Based on the testimony described above and my review of the record as a whole, I find that the individual has adequately addressed all of the security concerns set forth in the Notification Letter. With regard to the DOE’s concerns under paragraphs (h) and (j), I agree with the DOE psychiatrist that, as of the date of the hearing, the individual was exhibiting adequate evidence of rehabilitation and reformation. In making their decisions, hearing officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See, e.g., Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1997); *Personnel Security Hearing*, (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995); *Personnel Security Hearing*, (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995). In this case, the substance use and addiction counselor testified that because of the individual’s continuing abstinence and AA participation, his prognosis was “good,” Tr. at 58-59, and the DOE psychiatrist was convinced by the evidence presented at the hearing that the individual was demonstrating adequate reformation and rehabilitation. Tr. at 109. This evidence established that since the individual’s arrest in August 2004, he has undergone an intensive outpatient alcohol treatment program at a local facility and has 27 months of active participation in AA, during which he often took a leadership role in the meetings. The evidence further indicates that, with the exception of the brief April 2005 relapse, he has completely abstained from drinking during this period. Furthermore, this relapse was limited to the consumption of five beers over a two-day period. Given the extraordinary circumstances that led up to this “slip,” I believe it to be an isolated incident that is unlikely to be repeated. The DOE psychiatrist’s conclusion that the individual has demonstrated adequate evidence of rehabilitation and reformation is fully supported by the record in this proceeding.

As explained above, the remaining security issues relate to the fact that the individual smoked marijuana in 1992 and then lied about it during his 2002 PSI. I find that the security concerns under

paragraph (k) about the individual's illegal drug usage are adequately mitigated by the fact that it was an isolated incident that occurred approximately fifteen years ago. The individual's prevarication during his 2002 PSI is more recent, and is therefore of somewhat greater concern. However, I believe that the changes that have occurred in the individual's life since 2002, primarily due to his rehabilitation from Alcohol Dependence, have served to make him a more honest person. This was demonstrated in April 2005 when the individual voluntarily revealed, first to his AA sponsor and then to his group, that he had relapsed and consumed alcohol. That the individual did this even though he found it difficult, Tr. at 79, and even though he could have successfully concealed it, Tr. at 22, attests to his changed character. Moreover, the individual told the DOE psychiatrist about his 1992 marijuana usage even though he knew that there would be adverse consequences, because "if I don't and I hold this in, I could be putting my sobriety in jeopardy." Tr. at 95. Finally, at the hearing, I was impressed with the individual's forthrightness and with the testimony of his witnesses about the individual's honesty.² Tr. at 14, 40, 52, 60. I find that the individual has adequately addressed the DOE's security concerns under paragraph (f).

V. CONCLUSION

I therefore find that the individual has adequately addressed all of the security concerns set forth in the Notification Letter, and I conclude that he has demonstrated that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual's access authorization should be restored. The Office of Safeguards and Security may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals
Date: June 20, 2007

² I note, however, the following exchange that occurred at the hearing between the individual and DOE Counsel about the individual's false statement during the 2002 PSI.

Q. And in trying to be consistent [with the information that he gave about his 1992 drug usage on the Questionnaire for National Security Positions that he completed] you falsely assumed she had meant [drug usage] within the last seven years?

A. Yes.

lie to the security analyst?

Q. So you didn't

A. No.

Tr. at 96. Both before and after this exchange, the individual admitted that he did, in fact, lie to the security analyst and that he knew at the time of the interview that he was giving her false information. Tr. at 8, 93, 96, 100-102. Consequently, I do not believe that the individual gave these answers in an attempt to deceive. Instead, I attribute them to the leading nature of the DOE Counsel's questions and possibly to nervousness on the individual's part.

